

**EXHIBIT A**

**NETWORK DEPOSITION SERVICES**  
**Transcript of William Kitzes, J.D.**

Page 1

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 WESTERN DISTRICT OF PENNSYLVANIA

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THOMAS POWER, )

4

Plaintiff, )

5

) No.

-vs-

) 2:17-cv-00154-MRH

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)

HEWLETT-PACKARD COMPANY, )

7

)

Defendant. )

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VIDEO ZOOM DEPOSITION OF:

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WILLIAM KITZES, J.D.

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DATE: March 14, 2022

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Monday, 10:04 a.m.

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REPORTED BY: Kristin Lytle, RPR

19

Notary Public

20

Job No. KL82483

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NETWORK DEPOSITION SERVICES

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707 GRANT STREET, SUITE 1101

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PITTSBURGH, PA 15219

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**NETWORK DEPOSITION SERVICES**  
**Transcript of William Kitzes, J.D.**

2 (Pages 2 to 5)

Page 2	Page 4
<p>1 VIDEO DEPOSITION OF WILLIAM KITZES, J.D.,  a witness, called by the  2 Defendant for examination, in accordance with  the Federal Rules of Civil Procedure, taken  3 by and before Kristin Lytle, RPR, a Court  Reporter and Notary Public in and for the  4 Commonwealth of Pennsylvania, on Monday,  March 14, 2022, commencing at 10:04 a.m.</p> <p>5  6 REMOTE APPEARANCES:  7 FOR THE PLAINTIFF:  FRIDAY &amp; COX  8 Peter J. Friday, Esq.  pfriday@fridaylaw.com  9 1405 McFarland Road  Pittsburgh, PA 15216</p> <p>10  11 FOR THE DEFENDANT:  COUGHLIN &amp; BETKE  12 Christopher Betke, Esq.  cbetke@coughlinbetke.com  13 175 Federal Street, Suite 1450  Boston, MA 02110</p> <p>14  15 ALSO PRESENT:  Raymond Urbash, videographer</p> <p>16  17  18  19  20  21  22  23  24  25</p>	<p>1 THE VIDEOGRAPHER: We are now  2 on the record. Good morning. The date  3 today is March 14, 2022, and the time  4 is 10:04 a.m. This is the videotape  5 deposition of Mr. William F. Kitzes,  6 J.D., taken in the matter of Thomas  7 Power versus Hewlett-Packard Company  8 filed in the U.S. District Court for  9 the Western District of Pennsylvania,  10 Case Number 2:17-CV-00154-MRH.</p> <p>11 My name is Raymond Urbash,  12 and I'll be the videographer. Our  13 court reporter is Kristin Lytle, and we  14 represent Network Deposition Services.</p> <p>15 At this time if counsel  16 present can state their name and  17 appearances for the record after which  18 our court reporter may swear in the  19 witness and we can proceed.</p> <p>20 MR. BETKE: Chris Betke for  21 HP.</p> <p>22 MR. FRIDAY: Peter Friday for  23 the plaintiff.</p> <p>24 - - - -  25 WILLIAM KITZES, J.D.,</p>
Page 3	Page 5
<p>1 * I N D E X *  2 Examination by Mr. Betke - - - - - 5  Examination by Mr. Friday - - - - - 125</p> <p>3  4 Certificate of Court Reporter - - - - - 127  Errata Sheet - - - - - 128  5 Notice of Non-Waiver of Signature - - - 129</p> <p>6  7 * INDEX OF EXHIBITS *  8 Exhibit 1 - Mr. Kitzes's report - - - - 10</p> <p>9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p>1 having been duly sworn,  2 was examined and testified as follows:  3 - - - -  4 EXAMINATION  5 - - - -  6 BY MR. BETKE:  7 <b>Q. All right. Thank you.</b>  8 <b>Good morning, Mr. Kitzes. My</b>  9 <b>name is Chris Betke, and I represent HP</b>  10 <b>in this matter as you probably have</b>  11 <b>figured out for yourself after hearing</b>  12 <b>us talk a little bit. The -- a couple</b>  13 <b>of things. We agreed off the record,</b>  14 <b>plaintiff counsel and I, to reserve</b>  15 <b>objections except as to form and</b>  16 <b>motions to strike until the time of</b>  17 <b>trial.</b>  18 <b>I'm just going to go over a</b>  19 <b>few ground rules. I know you have</b>  20 <b>testified previously because I have</b>  21 <b>your list of testimony. But just to</b>  22 <b>make sure we're operating on the same</b>  23 <b>page here this morning.</b>  24 A. Sure.  25 Q. A little bit -- a little bit different</p>

**NETWORK DEPOSITION SERVICES**  
**Transcript of William Kitzes, J.D.**

5 (Pages 14 to 17)

<p style="text-align: right;">Page 14</p> <p>1 <b>Q. Okay.</b></p> <p>2 A. So if I bill 5-and-a-half, it's 5 --</p> <p>3 five 8-hour days and another 4 hours.</p> <p>4 <b>Q. Okay. All right. And so if you worked</b></p> <p>5 <b>about 5 or 6 days, that means you</b></p> <p>6 <b>worked somewhere between about 40 to --</b></p> <p>7 <b>40 -- what is it -- 46 hours?</b></p> <p>8 A. Yeah. About that, yeah. Five days</p> <p>9 took me 40 hours.</p> <p>10 <b>Q. All right. Did you need to buy</b></p> <p>11 <b>anything in connection with your work</b></p> <p>12 <b>on this case? In other words, did you</b></p> <p>13 <b>incur any expenses to speak of?</b></p> <p>14 A. No, sir.</p> <p>15 <b>Q. And can you tell me when you began your</b></p> <p>16 <b>work on this matter?</b></p> <p>17 A. I can't precisely but I would think it</p> <p>18 would have been the summer of 2020.</p> <p>19 <b>Q. Okay.</b></p> <p>20 A. About 3 or 4 months before the report</p> <p>21 is dated.</p> <p>22 <b>Q. Perfect.</b></p> <p>23 <b>Have you worked with the law</b></p> <p>24 <b>firm of Friday &amp; Cox previously?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 <b>Commission until 1981; am I correct</b></p> <p>2 <b>about that?</b></p> <p>3 A. May 1, 1981.</p> <p>4 <b>Q. All right. And have you worked for any</b></p> <p>5 <b>other governmental agency from that</b></p> <p>6 <b>date until now?</b></p> <p>7 A. Well, for 14 years I was the chairman</p> <p>8 of the Florida Consumer Council. But I</p> <p>9 didn't get -- that was a voluntary job.</p> <p>10 I just got expenses.</p> <p>11 <b>Q. Okay. When you were at the Consumer</b></p> <p>12 <b>Product Safety Commission, did you ever</b></p> <p>13 <b>have occasion to deal with notebook</b></p> <p>14 <b>computers or lithium ion batteries?</b></p> <p>15 A. I don't think either of them were in</p> <p>16 existence when I worked at the</p> <p>17 commission, so no.</p> <p>18 <b>Q. I believe that is correct. I think</b></p> <p>19 <b>that is correct, but you know, I wanted</b></p> <p>20 <b>to ask.</b></p> <p>21 A. Well, I take it back. There were</p> <p>22 notebooks. But the compact, the old</p> <p>23 big compact with the little tiny screen</p> <p>24 that was available then.</p> <p>25 <b>Q. Yeah. I mean, I think -- I think</b></p>
<p style="text-align: right;">Page 15</p> <p>1 <b>Q. About how many times?</b></p> <p>2 A. Well, prior to writing this report I</p> <p>3 would say once.</p> <p>4 <b>Q. All right.</b></p> <p>5 A. Maybe twice.</p> <p>6 <b>Q. All right. And how about since you</b></p> <p>7 <b>wrote this report?</b></p> <p>8 A. I have currently another 2 or 3 cases</p> <p>9 with them.</p> <p>10 <b>Q. Now I notice you have a J.D. Did you</b></p> <p>11 <b>ever practice law?</b></p> <p>12 A. I never -- never took a client as an</p> <p>13 attorney. I never practiced law. I</p> <p>14 hold an inactive license in the</p> <p>15 District of Columbia.</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. I held a license in Missouri 30 or</p> <p>18 40 years ago, but I let it lapse when I</p> <p>19 was no longer affiliated with the young</p> <p>20 woman who I married in Missouri.</p> <p>21 <b>Q. Okay. That's a can of worms that I'm</b></p> <p>22 <b>not going to open.</b></p> <p>23 A. No kids.</p> <p>24 <b>Q. All right. Let's see here. Now you</b></p> <p>25 <b>worked at the Consumer Product Safety</b></p>	<p style="text-align: right;">Page 17</p> <p>1 <b>computers existed but not notebook</b></p> <p>2 <b>computers, correct.</b></p> <p>3 A. I believe that's correct.</p> <p>4 <b>Q. And that same is true with lithium ion</b></p> <p>5 <b>batteries, correct?</b></p> <p>6 A. To the best of my recollection,</p> <p>7 absolutely correct.</p> <p>8 <b>Q. All right. And is it fair to say, sir,</b></p> <p>9 <b>that you never had any professional</b></p> <p>10 <b>affiliation or work in either computer</b></p> <p>11 <b>notebook design or manufacture?</b></p> <p>12 A. That would be correct.</p> <p>13 <b>Q. And also same question with respect to</b></p> <p>14 <b>battery packs. Did you ever have any</b></p> <p>15 <b>affiliation professionally with battery</b></p> <p>16 <b>pack design or manufacture?</b></p> <p>17 A. Well, I've had a previous case</p> <p>18 involving an explosion of a Dell, but I</p> <p>19 don't know what you mean by associated.</p> <p>20 If that qualifies, then I did.</p> <p>21 <b>Q. You know what -- yeah, okay. So I'm</b></p> <p>22 <b>really talking about -- when I talk</b></p> <p>23 <b>about design and manufacture, I mean on</b></p> <p>24 <b>the business side. In other words, not</b></p> <p>25 <b>on a forensic side or lawsuit side.</b></p>

**NETWORK DEPOSITION SERVICES**  
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6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1                   <b>Did you ever work for a</b>  2       <b>company where you played a role in</b>  3       <b>either battery pack design or</b>  4       <b>manufacture?</b>  5       A. Absolutely not.  6       <b>Q. All right. And again, the same sort of</b>  7       <b>question regarding the business side of</b>  8       <b>things. Did you -- were you ever</b>  9       <b>engaged by a notebook computer company</b>  10       <b>or a battery pack manufacturer to -- to</b>  11       <b>advise on safety or warning labels or</b>  12       <b>anything like that?</b>  13       A. No, sir.  14       <b>Q. Okay. So now I'm going to shift -- you</b>  15       <b>anticipate where I'm going. I'm going</b>  16       <b>to shift to the forensic work, if you</b>  17       <b>will, or litigation -- we'll call it</b>  18       <b>litigation-related services.</b>  19               <b>Have you had any cases</b>  20       <b>involving let's start with notebook</b>  21       <b>computers previously?</b>  22       A. Yes.  23       <b>Q. Okay. Can you identify for the record</b>  24       <b>those cases?</b>  25       A. I recall one case and it was a Dell</p>	<p style="text-align: right;">Page 20</p> <p>1       A. Well, I didn't look at the case. But  2       my opinion was that the battery  3       overheated, started the fire. There  4       were no warnings concerning leaving it  5       plugged in and its relationship to  6       combustibles.  7       <b>Q. Okay. So let me just back up.</b>  8               <b>You didn't offer any opinion</b>  9       <b>about what caused the fire, rather --</b>  10       A. No, sir.  11       <b>Q. Is that fair?</b>  12       A. That's fair.  13       <b>Q. Rather you --</b>  14       A. Let me -- I'm sorry. I'm speaking over  15       you. Go ahead.  16       <b>Q. Yeah, I was just going to say rather as</b>  17       <b>I understand it you were presented with</b>  18       <b>a scenario where it was opined by</b>  19       <b>someone that the notebook computer</b>  20       <b>caused the fire because it was plugged</b>  21       <b>in and it was in connection with</b>  22       <b>combustibles. And based upon that you</b>  23       <b>rendered an opinion about warnings or</b>  24       <b>lack thereof; is that fair?</b>  25       A. Yes. But I -- I did educate myself on</p>
<p style="text-align: right;">Page 19</p> <p>1       laptop.  2       <b>Q. And when and where was that case?</b>  3       A. Oh, it was probably 5 or 7 years ago,  4       and it was right here in Broward  5       County, which is just south of me, Fort  6       Lauderdale.  7       <b>Q. In the pre-Zoom days that made it quite</b>  8       <b>convenient; did it not?</b>  9       A. Yes, it did.  10       <b>Q. Did -- what was the -- what was the</b>  11       <b>general -- the gist of that case?</b>  12       A. A guy fell asleep with a Dell laptop on  13       his bed. The house caught fire and he  14       died of smoke inhalation to the best of  15       my recollection.  16       <b>Q. Was there an allegation in that case</b>  17       <b>that there was a problem or issue with</b>  18       <b>a -- the battery pack in the Dell</b>  19       <b>laptop?</b>  20       A. That's my recollection, yes, sir.  21       <b>Q. Okay. And did you render any opinions</b>  22       <b>regarding the Dell laptop?</b>  23       A. The laptop and the battery, yes.  24       <b>Q. Okay. Just as best you can recall what</b>  25       <b>was the upshot of your opinion?</b></p>	<p style="text-align: right;">Page 21</p> <p>1       the surface technology of the  2       batteries. I'm not an engineer. I  3       didn't render an opinion as to  4       causation if that's the question.  5       <b>Q. Yeah. That is the question I guess.</b>  6       <b>Right.</b>  7       A. I did not.  8       <b>Q. But you're saying you did sort of a --</b>  9       <b>you got yourself a general</b>  10       <b>understanding at least to your belief</b>  11       <b>about what -- what could have caused</b>  12       <b>the fire and how it could have</b>  13       <b>happened; is that fair?</b>  14       A. Just on a very general level, yes, sir.  15       <b>Q. All right. But certainly you weren't</b>  16       <b>being offered as an expert in that</b>  17       <b>regard nor did you opine as an expert</b>  18       <b>in that regard, correct?</b>  19       A. That's correct.  20       <b>Q. All right. And aside from that one</b>  21       <b>case involving Dell, have there been</b>  22       <b>any other instances where you have</b>  23       <b>offered opinions regarding either</b>  24       <b>notebook computers or lithium ion</b>  25       <b>batteries?</b></p>

**NETWORK DEPOSITION SERVICES**  
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7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 A. Not to the best of my recollection.</p> <p>2 <b>Q. Okay. Do you recall the name of that</b></p> <p>3 <b>case?</b></p> <p>4 A. I can look it up. The attorney's name</p> <p>5 was Dan Cytryn, C-Y-T-R-I-N, or</p> <p>6 C-I-T-R-Y-N. I can look up the name</p> <p>7 for you.</p> <p>8 <b>Q. Okay. I would ask if you would do</b></p> <p>9 <b>that. Thank you.</b></p> <p>10 A. Uh-huh.</p> <p>11 <b>Q. Is it in your list of testimony by any</b></p> <p>12 <b>chance?</b></p> <p>13 <b>I think it's outside the --</b></p> <p>14 <b>it may be outside the prior time but --</b></p> <p>15 A. It's outside 4 years. And it -- and</p> <p>16 it -- it didn't go to trial.</p> <p>17 <b>Q. Okay. Did you give -- did you give a</b></p> <p>18 <b>deposition in that case; do you recall?</b></p> <p>19 A. I believe I did.</p> <p>20 <b>Q. All right.</b></p> <p>21 A. But I will get the caption to Pete, and</p> <p>22 he can pass it on to you.</p> <p>23 <b>Q. All right. Thank you.</b></p> <p>24 <b>So prior to this case you had</b></p> <p>25 <b>no -- you've had no professional work</b></p>	<p style="text-align: right;">Page 24</p> <p>1 entirety of human factors.</p> <p>2 <b>Q. Have you ever been subject to what they</b></p> <p>3 <b>call a Daubert challenge?</b></p> <p>4 A. Often.</p> <p>5 <b>Q. Have there -- have there been any</b></p> <p>6 <b>successful ones?</b></p> <p>7 A. Well, there have been a couple cases</p> <p>8 where I haven't gotten to testify.</p> <p>9 <b>Q. Okay. And so -- go ahead.</b></p> <p>10 A. Go ahead. No, ask your question.</p> <p>11 <b>Q. So what cases were those?</b></p> <p>12 A. Well, the ones I can recall there was a</p> <p>13 case in New Jersey that involved the</p> <p>14 placement of a warning label on a</p> <p>15 WaveRunner, a personal watercraft, a</p> <p>16 Yamaha.</p> <p>17 <b>Q. Yeah.</b></p> <p>18 A. And the judge said I was qualified to</p> <p>19 render opinions but the jury could</p> <p>20 figure it out themselves.</p> <p>21 <b>Q. Okay.</b></p> <p>22 A. There was a case in Pittsburgh on a</p> <p>23 Scripto Tokai utility lighter where</p> <p>24 there were 2 or 3 experts testifying on</p> <p>25 the same product, and the judge said</p>
<p style="text-align: right;">Page 23</p> <p>1 <b>for -- involving -- meaning, you know,</b></p> <p>2 <b>business work regarding notebook</b></p> <p>3 <b>computers or battery packs. And your</b></p> <p>4 <b>one instance of testifying is the Dell</b></p> <p>5 <b>case, correct?</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. All right. And you're not an</b></p> <p>8 <b>electrical engineer nor do you have any</b></p> <p>9 <b>engineering background, correct?</b></p> <p>10 A. I'm not an engineer. I have never -- I</p> <p>11 don't have a degree in engineering. I</p> <p>12 have taken some courses that relate to</p> <p>13 engineering like at the University of</p> <p>14 Michigan. But I don't claim to be an</p> <p>15 engineer, I'm not an engineer, and I</p> <p>16 will not render engineering opinions.</p> <p>17 <b>Q. All right. Fair enough.</b></p> <p>18 <b>Have you written any</b></p> <p>19 <b>peer-reviewed articles about notebook</b></p> <p>20 <b>computers or lithium ion batteries?</b></p> <p>21 A. No, sir.</p> <p>22 <b>Q. All right. Are you an expert in human</b></p> <p>23 <b>factors?</b></p> <p>24 A. As it relates to warnings and safety</p> <p>25 communication, yes, but not the</p>	<p style="text-align: right;">Page 25</p> <p>1 that it was cumulative and I didn't</p> <p>2 testify.</p> <p>3 <b>There was a case in Ohio</b></p> <p>4 <b>called -- the product manufacturer was</b></p> <p>5 <b>called Leatt. It was a South African</b></p> <p>6 <b>manufacturer of back braces for BMX</b></p> <p>7 <b>bicycle racers. And the judge in Ohio</b></p> <p>8 <b>said my report wasn't sufficiently in</b></p> <p>9 <b>depth. But with the same lawyers, the</b></p> <p>10 <b>same product also in federal court in</b></p> <p>11 <b>Kentucky the judge said I was more than</b></p> <p>12 <b>welcome to testify about the same</b></p> <p>13 <b>thing.</b></p> <p>14 <b>Q. All right.</b></p> <p>15 A. And there may have been one or two</p> <p>16 others, but those are the ones that I</p> <p>17 recall.</p> <p>18 <b>Q. All right. Okay. So can you just tell</b></p> <p>19 <b>me, sir, generally what you did in</b></p> <p>20 <b>order to render your opinions in this</b></p> <p>21 <b>case?</b></p> <p>22 <b>Just walk me through what --</b></p> <p>23 <b>what actions you took. And you don't</b></p> <p>24 <b>have to go in deep detail. We're</b></p> <p>25 <b>talking right now general. I'll ask</b></p>

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8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1 more specifically.</p> <p>2 A. Sure.</p> <p>3 <b>Q. Generally what did you do?</b></p> <p>4 A. I collected all the data in my report.</p> <p>5 I subjected it to a risk assessment.</p> <p>6 Design review is the old term. Risk</p> <p>7 assessment is the new term. I looked</p> <p>8 at the warnings and instructions, took</p> <p>9 the injury data into account, and wrote</p> <p>10 my opinions.</p> <p>11 <b>Q. Okay. Did you ever talk to Mr. Power?</b></p> <p>12 A. No.</p> <p>13 <b>Q. Why not?</b></p> <p>14 A. I generally don't. I got the</p> <p>15 information about the incident, and I</p> <p>16 rarely talk to the plaintiff unless it</p> <p>17 goes trial.</p> <p>18 <b>Q. Okay. Well, in this particular</b></p> <p>19 <b>instance, you're offering an opinion</b></p> <p>20 <b>that he wasn't warned about something,</b></p> <p>21 <b>right?</b></p> <p>22 A. Right.</p> <p>23 <b>Q. And so how did you determine that he</b></p> <p>24 <b>even needed a warning?</b></p> <p>25 A. Well, it's clear from the facts that he</p>	<p style="text-align: right;">Page 28</p> <p>1 <b>Mr. Power's deposition was taken in</b></p> <p>2 <b>this case, correct?</b></p> <p>3 A. That's my recollection, yes.</p> <p>4 <b>Q. Do you know from his deposition whether</b></p> <p>5 <b>he owned an EliteBook previously?</b></p> <p>6 A. I do not know.</p> <p>7 <b>Q. Do you know whether at the time his</b></p> <p>8 <b>deposition was taken whether plaintiff's</b></p> <p>9 <b>theory in this case was that there was</b></p> <p>10 <b>a third-party battery in the HP</b></p> <p>11 <b>EliteBook or whether it was an original</b></p> <p>12 <b>HP Elite battery?</b></p> <p>13 A. I believe the battery was third party.</p> <p>14 <b>Q. Okay. All right. So I want to be</b></p> <p>15 <b>clear. At the time his deposition was</b></p> <p>16 <b>taken, do you know which theory the</b></p> <p>17 <b>plaintiff was pursuing, i.e., was it,</b></p> <p>18 <b>A, there was an HP -- defective HP</b></p> <p>19 <b>approved battery in it, or B, a</b></p> <p>20 <b>nonapproved third-party battery?</b></p> <p>21 MR. FRIDAY: Objection to</p> <p>22 form.</p> <p>23 A. There's a third position which is that</p> <p>24 it's an HP compatible and HP -- I don't</p> <p>25 know about the word approved, but they</p>
<p style="text-align: right;">Page 27</p> <p>1 was surprised when it exploded. And my</p> <p>2 testimony concerns what HP needed to do</p> <p>3 in order to adequately warn people.</p> <p>4 <b>Q. All right. So is it fair to say that</b></p> <p>5 <b>you did not really make any assessment</b></p> <p>6 <b>about whether or not Mr. Power needed a</b></p> <p>7 <b>warning?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. All right. And did you know, sir --</b></p> <p>10 <b>you looked at Mr. Power's deposition</b></p> <p>11 <b>transcript in connection with this</b></p> <p>12 <b>case, correct?</b></p> <p>13 A. Yes.</p> <p>14 MR. FRIDAY: Excuse me.</p> <p>15 Objection to form, argumentative.</p> <p>16 BY MR. BETKE:</p> <p>17 <b>Q. Okay. You know what, we'll try to</b></p> <p>18 <b>pause a little bit more to give Pete a</b></p> <p>19 <b>chance to weigh in. He's driving so we</b></p> <p>20 <b>want to be fair to him.</b></p> <p>21 A. We want to keep his eyes on the road.</p> <p>22 <b>Q. Yeah, yeah.</b></p> <p>23 A. And certainly hands free.</p> <p>24 <b>Q. Gotta be hands free.</b></p> <p>25 <b>Okay. So you understand that</b></p>	<p style="text-align: right;">Page 29</p> <p>1 work with third-party manufacturers to</p> <p>2 create batteries that would fit in the</p> <p>3 EliteBook that were not manufactured by</p> <p>4 AP (sic) or Sony specifically for HP.</p> <p>5 <b>Q. Okay. All right. So yeah, I</b></p> <p>6 <b>thought there -- let me see if -- I</b></p> <p>7 <b>want to clarify things because I think</b></p> <p>8 <b>there's some confusion about terms that</b></p> <p>9 <b>are being used both in your report and</b></p> <p>10 <b>how I would use them.</b></p> <p>11 A. Sure.</p> <p>12 <b>Q. So you understand -- do you want to</b></p> <p>13 <b>have an understanding one way or the</b></p> <p>14 <b>other whether HP is a battery pack</b></p> <p>15 <b>manufacturer?</b></p> <p>16 A. They manufactured the battery back I</p> <p>17 believe or the battery adapter. The</p> <p>18 battery pack that contained the lithium</p> <p>19 ion battery was not manufactured by HP.</p> <p>20 <b>Q. Okay. But I'm talking generally. Does</b></p> <p>21 <b>HP -- and I'm going to ask you about</b></p> <p>22 <b>your use of the term battery pack</b></p> <p>23 <b>adapter because I don't know what that</b></p> <p>24 <b>means. So I'm going to ask you about</b></p> <p>25 <b>that in a moment.</b></p>



**NETWORK DEPOSITION SERVICES**  
**Transcript of William Kitzes, J.D.**

17 (Pages 62 to 65)

Page 62	Page 64
<p>1 you say somebody else. Approved HP  2 batteries can come from somebody else,  3 but they're approved by HP but they  4 didn't come from HP in an HP battery  5 pack.  6 <b>Q. Right.</b>  7 A. Okay. Great. I think we're on the  8 same --  9 <b>Q. They're made by somebody else, meaning</b>  10 <b>somebody who is not approved to make</b>  11 <b>them for HP.</b>  12 A. Right. Correct.  13 <b>Q. Okay.</b>  14 A. Perfect.  15 <b>Q. All right. All right. So when we get</b>  16 <b>to the top of page 10, you say: HP is</b>  17 <b>well aware that third-party non-HP</b>  18 <b>approved batteries are used in HP</b>  19 <b>products and throughout the industry.</b>  20 <b>Just to make sure now we're</b>  21 <b>talking about the same thing, I wanted</b>  22 <b>to ask specifically about that sentence</b>  23 <b>and then say what is your basis to --</b>  24 <b>of belief that HP was well aware that</b>  25 <b>nonapproved HP batteries were used in</b></p>	<p>1 <b>Q. Okay. So -- and then do you know when</b>  2 <b>this -- the Power notebook was</b>  3 <b>manufactured?</b>  4 A. You know, I don't. I was trying to  5 find out. I know he bought it in 2013  6 on eBay, but I do not know the date of  7 manufacture.  8 <b>Q. All right. Are you -- do you know</b>  9 <b>whether or not any of the HP engineers</b>  10 <b>testified to that?</b>  11 A. I couldn't find it.  12 <b>Q. Okay.</b>  13 A. Now maybe somebody knows. I don't know  14 and I couldn't find it in any of the  15 material.  16 <b>Q. And why -- why were you looking for it?</b>  17 A. Well, particularly in reference to  18 other dates in my report like 2008  19 where there seems to be available  20 authentication software to tell if it  21 was a, quote, unquote, counterfeit  22 battery.  23 <b>Q. Okay.</b>  24 A. So it's my understanding that it was  25 probably made before then.</p>
Page 63	Page 65
<p>1 <b>HP products and throughout the</b>  2 <b>industry?</b>  3 A. Okay. Go back one page to page 9.  4 <b>Q. Okay.</b>  5 A. Go to the fourth bullet point.  6 <b>Q. Yes.</b>  7 A. HP engineers say they are aware that  8 non-HP approved battery packs can fit  9 in the notebook. That's how.  10 <b>Q. Okay. And so who -- who testified to</b>  11 <b>that and where?</b>  12 A. Well, you'll -- if you want to find  13 which engineer said it, we will have to  14 take a break again, and I will have to  15 find it.  16 <b>Q. All right. So you can't -- you don't</b>  17 <b>have a reference to it in your report,</b>  18 <b>and you don't recall off the top of</b>  19 <b>your head; is that fair?</b>  20 A. No. I -- I combined all the HP  21 engineers important points into that  22 section. I did not -- I didn't say who  23 said it. I can find it for you.  24 <b>Q. And you didn't cite the page either?</b>  25 A. No, I didn't.</p>	<p>1 <b>Q. All right. So I will represent to you</b>  2 <b>that the date of manufacture of the</b>  3 <b>Power notebook was August 18, 2009.</b>  4 <b>Okay?</b>  5 A. Uh-huh.  6 <b>Q. Is that yes?</b>  7 A. Yes, sir.  8 <b>Q. All right. And you would agree with me</b>  9 <b>that if it was manufactured on that</b>  10 <b>date that means that the design of it</b>  11 <b>would have to have taken place sometime</b>  12 <b>before 2009, correct?</b>  13 A. I would say yes.  14 <b>Q. All right. And -- but you don't have</b>  15 <b>expertise in notebook design or</b>  16 <b>manufacturing; and therefore, you don't</b>  17 <b>know how long before 2009 but certainly</b>  18 <b>before 2009?</b>  19 A. That's correct.  20 <b>Q. Products don't just materialize on the</b>  21 <b>market. You've got to design them.</b>  22 <b>You've got to spec them. You've got to</b>  23 <b>manufacture them, and then you can sell</b>  24 <b>them.</b>  25 A. Certainly -- right. You've got to</p>



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18 (Pages 66 to 69)

Page 66	Page 68
<p>1 design them. You've got to go to the</p> <p>2 producer. You know, it takes time.</p> <p>3 Absolutely.</p> <p>4 <b>Q. Okay. All right. But you don't know</b></p> <p>5 <b>how much time?</b></p> <p>6 <b>A. I don't.</b></p> <p>7 <b>Q. All right. Now you just mentioned in</b></p> <p>8 <b>your answer and you reference it in</b></p> <p>9 <b>your report that you believe that there</b></p> <p>10 <b>was authentication of pop-up</b></p> <p>11 <b>technology.</b></p> <p>12 <b>And I just want to try to</b></p> <p>13 <b>find that in your report. I believe</b></p> <p>14 <b>it's the bottom of page 11 that you're</b></p> <p>15 <b>referring to.</b></p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q. Am I right about that?</b></p> <p>18 <b>A. You are correct.</b></p> <p>19 <b>Q. Okay. And you wrote here -- I'm just</b></p> <p>20 <b>going to read it for the record, and</b></p> <p>21 <b>then I will ask you some questions</b></p> <p>22 <b>about it.</b></p> <p>23 <b>It says: Beginning in late</b></p> <p>24 <b>2008, HP notebook with Unified</b></p> <p>25 <b>Extensible Firmware Interface (UEFI)</b></p>	<p>1 <b>battery as well as the capacity of any</b></p> <p>2 <b>secondary battery that may be</b></p> <p>3 <b>installed. If the system detects that</b></p> <p>4 <b>the storage capacity of the battery is</b></p> <p>5 <b>very low, it displays one of the</b></p> <p>6 <b>following alerts. And then it has some</b></p> <p>7 <b>alerts. Correct?</b></p> <p>8 <b>A. Correct.</b></p> <p>9 <b>Q. All right. And where is the part where</b></p> <p>10 <b>it alerts about -- it's at the bottom</b></p> <p>11 <b>of that page -- different --</b></p> <p>12 <b>differences between battery messages;</b></p> <p>13 <b>is that correct?</b></p> <p>14 <b>A. Yes. It's typically the last bullet</b></p> <p>15 <b>point on that page, 605.</b></p> <p>16 <b>Q. All right. And that says: Battery</b></p> <p>17 <b>Counterfeit Check Error, 605, a non-HP</b></p> <p>18 <b>battery was detected. If you purchased</b></p> <p>19 <b>the battery from a reseller, contact</b></p> <p>20 <b>HP. Is that correct?</b></p> <p>21 <b>A. That's a direct quote from that</b></p> <p>22 <b>document.</b></p> <p>23 <b>Q. All right. All right. And so your --</b></p> <p>24 <b>so the source of your belief that there</b></p> <p>25 <b>was pop-up technology that would alert</b></p>
Page 67	Page 69
<p>1 <b>included pop-up message 605 -- Battery</b></p> <p>2 <b>Counterfeit Check Error when it detects</b></p> <p>3 <b>a non-HP battery. User is instructed</b></p> <p>4 <b>to contact HP.</b></p> <p>5 <b>Did I read that correctly?</b></p> <p>6 <b>A. You did. And then go to the top of</b></p> <p>7 <b>page 15 and there's more to that.</b></p> <p>8 <b>Q. All right. All right. Perfect.</b></p> <p>9 <b>I was just going to ask you</b></p> <p>10 <b>where the source of that was, so you</b></p> <p>11 <b>anticipated my question.</b></p> <p>12 <b>A. I'm flipping ahead of you.</b></p> <p>13 <b>Q. All right. It says here -- you</b></p> <p>14 <b>reference HP notebook PCs-601 or 60X</b></p> <p>15 <b>error displays on a black screen at</b></p> <p>16 <b><a href="https://support.hp.com">https://support.hp.com</a>.</b></p> <p>17 <b>And then you reference: This</b></p> <p>18 <b>document pertains to HP notebooks with</b></p> <p>19 <b>the HP Unified Extensible Firmware</b></p> <p>20 <b>Interface (UEFI) beginning in late</b></p> <p>21 <b>2008.</b></p> <p>22 <b>And then you go on and say:</b></p> <p>23 <b>On startup, the computer performs a</b></p> <p>24 <b>battery check by examining the</b></p> <p>25 <b>remaining capacity of the primary</b></p>	<p>1 <b>someone to a counterfeit battery is</b></p> <p>2 <b>HP -- is <a href="http://support.hp.com">support.hp.com</a> as you</b></p> <p>3 <b>referenced here on page 15, correct?</b></p> <p>4 <b>A. Yes, sir.</b></p> <p>5 <b>Q. Okay. Do you have the specific address</b></p> <p>6 <b>where that would be located because</b></p> <p>7 <b>obviously that's like a general</b></p> <p>8 <b>website? Do you have the specific?</b></p> <p>9 <b>A. I don't know. Let me see.</b></p> <p>10 <b>Q. All right.</b></p> <p>11 <b>A. It looks like I don't off the top of my</b></p> <p>12 <b>head, but I'd be happy to find it for</b></p> <p>13 <b>you and provide it to Mr. --</b></p> <p>14 <b>Mr. Friday.</b></p> <p>15 <b>Q. Okay. Would that be something you</b></p> <p>16 <b>would have kept in your file so that</b></p> <p>17 <b>you could subsequently, you know,</b></p> <p>18 <b>locate it again?</b></p> <p>19 <b>A. If you want to go off the record again,</b></p> <p>20 <b>I will look through my entire file.</b></p> <p>21 <b>Q. No. Hang on one second. I was just</b></p> <p>22 <b>asking first if that is something that</b></p> <p>23 <b>you would typically keep in your file</b></p> <p>24 <b>so that you could locate it at a later</b></p> <p>25 <b>date and time?</b></p>

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19 (Pages 70 to 73)

Page 70	Page 72
<p>1 A. Typically, yes.</p> <p>2 <b>Q. Okay. So I would ask that you go</b></p> <p>3 <b>back -- not now. Go back and look for</b></p> <p>4 <b>it and provide it to Mr. Friday when</b></p> <p>5 <b>you find it. Okay?</b></p> <p>6 A. Absolutely. I'm going to make a note</p> <p>7 right on my copy of the report.</p> <p>8 <b>Q. All right.</b></p> <p>9 A. I will put a red flag on it. Find</p> <p>10 reference. Okay.</p> <p>11 <b>Q. Did you -- did you do anything, sir, to</b></p> <p>12 <b>ascertain to what extent there was a</b></p> <p>13 <b>market in 2008 and 2009 in nonapproved</b></p> <p>14 <b>batteries on the Internet?</b></p> <p>15 A. Not for those specific dates, no.</p> <p>16 <b>Q. Okay. Now you understand that</b></p> <p>17 <b>Mr. Powers bought his EliteBook on</b></p> <p>18 <b>eBay?</b></p> <p>19 A. That's my understanding, yes, sir.</p> <p>20 <b>Q. Do you know how much he paid for it?</b></p> <p>21 A. I do not.</p> <p>22 <b>Q. Do you know how much a new EliteBook</b></p> <p>23 <b>would have cost in 2013?</b></p> <p>24 A. Not off the top of my head, no.</p> <p>25 <b>Q. Do you know how much they would have</b></p>	<p>1 <b>understanding the only warning was to</b></p> <p>2 <b>use HP spares?</b></p> <p>3 A. Yes, sir. That's -- that's the only</p> <p>4 one that I'm aware of.</p> <p>5 <b>Q. Okay. And where -- where did that</b></p> <p>6 <b>appear?</b></p> <p>7 A. In the engineers' reports. Other than</p> <p>8 that, I don't know.</p> <p>9 <b>Q. No, I meant where was the warning</b></p> <p>10 <b>provided?</b></p> <p>11 A. Oh, in some of the documentation. I</p> <p>12 don't specifically remember where. But</p> <p>13 I'm agreeing with you that somewhere</p> <p>14 that was provided.</p> <p>15 <b>Q. Okay. So as you sit here today, do you</b></p> <p>16 <b>know whether that was in a user's</b></p> <p>17 <b>manual, on the product itself, or</b></p> <p>18 <b>otherwise?</b></p> <p>19 A. It wasn't on the product itself. It</p> <p>20 would have been in some documentation</p> <p>21 that HP generally provided with a new</p> <p>22 computer.</p> <p>23 <b>Q. Okay. So do you have an understanding</b></p> <p>24 <b>as you sit here today whether there was</b></p> <p>25 <b>any notification or warning that was</b></p>
Page 71	Page 73
<p>1 <b>cost in 2009 when they rolled off the</b></p> <p>2 <b>market?</b></p> <p>3 A. No, sir.</p> <p>4 <b>Q. All right. So as you sit here today,</b></p> <p>5 <b>you don't know the price differential</b></p> <p>6 <b>between what Mr. Power paid and what</b></p> <p>7 <b>you pay to buy one new?</b></p> <p>8 A. I do not.</p> <p>9 <b>Q. All right. And do you know -- and I</b></p> <p>10 <b>may have asked you this. And if I did,</b></p> <p>11 <b>I apologize. Do you know whether or</b></p> <p>12 <b>not Mr. Power ever owned an EliteBook</b></p> <p>13 <b>prior to this one?</b></p> <p>14 A. I do not know.</p> <p>15 <b>Q. Do you know if he testified about that</b></p> <p>16 <b>at his deposition?</b></p> <p>17 A. If he did, he did. I just don't recall</p> <p>18 it.</p> <p>19 <b>Q. Okay. With respect to -- and I don't</b></p> <p>20 <b>know if I closed the loop on this, so</b></p> <p>21 <b>let me just revisit it. With respect</b></p> <p>22 <b>to warnings at HP that you're aware of</b></p> <p>23 <b>that HP provided to users of EliteBook</b></p> <p>24 <b>about using non-HP approved parts,</b></p> <p>25 <b>including battery packs, is it your</b></p>	<p>1 <b>provided on the product itself when it</b></p> <p>2 <b>left HP's hands?</b></p> <p>3 A. I don't believe so.</p> <p>4 <b>Q. Okay.</b></p> <p>5 A. But if there is I will agree with you</p> <p>6 there is. I just don't recall that.</p> <p>7 <b>Q. Do you make reference to any such</b></p> <p>8 <b>warning in your report?</b></p> <p>9 A. No, sir.</p> <p>10 <b>Q. All right. And so you believe it was</b></p> <p>11 <b>provided -- the warning that you</b></p> <p>12 <b>referenced about replace with HP spares</b></p> <p>13 <b>or words to that effect, that warning</b></p> <p>14 <b>as you understand it was in</b></p> <p>15 <b>documentation that would be provided to</b></p> <p>16 <b>the original purchaser; is that</b></p> <p>17 <b>correct?</b></p> <p>18 A. Or some place available on the</p> <p>19 Internet, one or the other.</p> <p>20 <b>Q. All right. Well, I was just going to</b></p> <p>21 <b>ask you that. Do you have an</b></p> <p>22 <b>understanding of whether that same --</b></p> <p>23 <b>those same user manuals and other</b></p> <p>24 <b>documentation would be available on the</b></p> <p>25 <b>Internet?</b></p>

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**Transcript of William Kitzes, J.D.**

20 (Pages 74 to 77)

Page 74	Page 76
<p>1 A. Absolutely.</p> <p>2 <b>Q. Okay. And in fact, many of the things</b></p> <p>3 <b>you reference you just pulled off the</b></p> <p>4 <b>Internet, correct?</b></p> <p>5 A. You're absolutely right.</p> <p>6 <b>Q. So anyone who had Internet access could</b></p> <p>7 <b>basically do the same thing you did</b></p> <p>8 <b>which is search and find these</b></p> <p>9 <b>materials, correct?</b></p> <p>10 A. Theoretically if you knew there was an</p> <p>11 issue to search for because there's</p> <p>12 tons of stuff on the Internet.</p> <p>13 <b>Q. We know that.</b></p> <p>14 A. But it's there, okay. It's there.</p> <p>15 <b>Q. And -- and some of the materials that</b></p> <p>16 <b>you referenced are simply at something</b></p> <p>17 <b>called HP.com, correct?</b></p> <p>18 A. Yes. HP has many different places you</p> <p>19 can go.</p> <p>20 <b>Q. All right.</b></p> <p>21 A. Including HP.com.</p> <p>22 <b>Q. All right.</b></p> <p>23 A. If you knew what you were looking for.</p> <p>24 <b>Q. Or if you just wanted to nose around</b></p> <p>25 <b>too. You don't have to be looking for</b></p>	<p>1 <b>to you he knew about?</b></p> <p>2 A. My impression is that he had no idea.</p> <p>3 <b>Q. And what is that based on?</b></p> <p>4 A. Well, he -- he never opened up the</p> <p>5 battery pack to look at it is my</p> <p>6 understanding. And I don't think -- I</p> <p>7 don't believe based on the research</p> <p>8 that I've done and what's in his dep</p> <p>9 that he had any idea what the battery</p> <p>10 pack was.</p> <p>11 <b>Q. No, but I'm asking about the things</b></p> <p>12 <b>you're saying he should have been</b></p> <p>13 <b>warned about.</b></p> <p>14 A. Oh.</p> <p>15 <b>Q. I'm asking you do you have any idea or</b></p> <p>16 <b>did you undertake to ascertain whether</b></p> <p>17 <b>any of the things that you contend</b></p> <p>18 <b>Mr. Power should have been warned about</b></p> <p>19 <b>he had knowledge of separate and apart</b></p> <p>20 <b>from any warning?</b></p> <p>21 MR. FRIDAY: Objection form.</p> <p>22 BY MR. BETKE:</p> <p>23 <b>Q. Go ahead.</b></p> <p>24 A. I am -- I am unaware.</p> <p>25 <b>Q. You don't know one way or the other?</b></p>
Page 75	Page 77
<p>1 <b>something. You can just nose around</b></p> <p>2 <b>about your product, right?</b></p> <p>3 A. I find that to be in my own</p> <p>4 experience -- it's not a technical</p> <p>5 opinion -- very rare that somebody</p> <p>6 would do that.</p> <p>7 <b>Q. All right. You have no knowledge or</b></p> <p>8 <b>information about what, if anything,</b></p> <p>9 <b>the eBay seller who sold the notebook</b></p> <p>10 <b>computer, the EliteBook, to Mr. Power</b></p> <p>11 <b>may have done to it prior to selling it</b></p> <p>12 <b>to him, do you?</b></p> <p>13 A. I do not.</p> <p>14 <b>Q. All right. And with respect to any</b></p> <p>15 <b>alleged pop-up technology, do you have</b></p> <p>16 <b>any knowledge or experience or</b></p> <p>17 <b>expertise regarding whether or not that</b></p> <p>18 <b>can be defeated by, you know,</b></p> <p>19 <b>aftermarket -- well, I don't want to</b></p> <p>20 <b>use that term, by nonapproved battery</b></p> <p>21 <b>manufacturers?</b></p> <p>22 A. In technical terms, not a clue.</p> <p>23 <b>Q. Okay. Do you know whether or not the</b></p> <p>24 <b>issues that you contend Mr. Power</b></p> <p>25 <b>should have been warned about according</b></p>	<p>1 A. I do not. You'll have to ask him.</p> <p>2 <b>Q. Okay. Well, you could have asked him;</b></p> <p>3 <b>could you not have?</b></p> <p>4 A. Well --</p> <p>5 MR. FRIDAY: Excuse me.</p> <p>6 Objection, argumentative.</p> <p>7 THE WITNESS: Outside of his</p> <p>8 deposition which you took or somebody</p> <p>9 working with you took, I didn't did not</p> <p>10 ask him any questions.</p> <p>11 BY MR. BETKE:</p> <p>12 <b>Q. You could have asked him questions;</b></p> <p>13 <b>could you not have?</b></p> <p>14 A. Is it theoretically possible?</p> <p>15 Absolutely.</p> <p>16 <b>Q. Well, I mean, you work for him. So you</b></p> <p>17 <b>could have asked him questions, right?</b></p> <p>18 MR. FRIDAY: Objection,</p> <p>19 argumentative, form. Come on.</p> <p>20 A. I'm sorry. Can you repeat that</p> <p>21 question?</p> <p>22 BY MR. BETKE:</p> <p>23 <b>Q. Do you work -- you work for Mr. Power</b></p> <p>24 <b>in connection with this case, correct?</b></p> <p>25 A. Yes, sir.</p>

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**Transcript of William Kitzes, J.D.**

21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 <b>Q.</b> Was there anything preventing you from</p> <p>2 asking Mr. Friday or someone else from</p> <p>3 his office for access to Mr. Power to</p> <p>4 ask him questions? Yes or no?</p> <p>5 A. There was nothing preventing me.</p> <p>6 <b>Q.</b> All right. You had mentioned earlier</p> <p>7 something about a battery adapter. Do</p> <p>8 you recall saying that?</p> <p>9 A. Well, there's a power adapter.</p> <p>10 <b>Q.</b> Okay.</p> <p>11 A. And that's connected to the battery</p> <p>12 that plugs into the wall.</p> <p>13 <b>Q.</b> Okay. Do you believe that the AC</p> <p>14 adapter --</p> <p>15 A. Okay. Let's call it that, the AC</p> <p>16 adapter.</p> <p>17 <b>Q.</b> Do you believe that the AC adapter</p> <p>18 connects to the battery pack or to the</p> <p>19 notebook computer itself or do you</p> <p>20 know?</p> <p>21 A. Well, it connects to both. The AC</p> <p>22 adapter charges the battery so it has</p> <p>23 to connect.</p> <p>24 <b>Q.</b> I'm talking about direct connection,</p> <p>25 sir.</p>	<p style="text-align: right;">Page 80</p> <p>1 11 --</p> <p>2 A. Right.</p> <p>3 <b>Q.</b> -- was in the original EliteBook when</p> <p>4 it shipped from HP?</p> <p>5 A. I do not know.</p> <p>6 <b>Q.</b> Do you know whether or not the eBay</p> <p>7 seller -- the person unknown, at least</p> <p>8 as I sit here today -- maybe we have</p> <p>9 that. I don't know. The eBay seller</p> <p>10 to Mr. Power do you know whether that</p> <p>11 person changed or did anything to the</p> <p>12 original software that was included in</p> <p>13 the EliteBook?</p> <p>14 A. I don't know if anybody did anything to</p> <p>15 it.</p> <p>16 <b>Q.</b> We have no way of knowing because we</p> <p>17 never talked to that guy, correct?</p> <p>18 A. Well, I have no idea.</p> <p>19 <b>Q.</b> All right. So going back to page 10 of</p> <p>20 your report under pertinent facts,</p> <p>21 there's a section where it says: HP</p> <p>22 provides -- a bullet point. I'm sorry,</p> <p>23 not a section, a bullet point.</p> <p>24 HP provides Material Safety</p> <p>25 Data Sheets for third-party non-HP</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Engineering-wise I can't tell you.</p> <p>2 <b>Q.</b> You don't know?</p> <p>3 A. Absolutely not.</p> <p>4 <b>Q.</b> All right. And you understand, sir,</p> <p>5 that the notebook computer could be</p> <p>6 used without a battery even in if it's</p> <p>7 plugged into the AC adapter and the AC</p> <p>8 adapter is plugged into the wall? Do</p> <p>9 you know that?</p> <p>10 A. In fact, in my report the level 17</p> <p>11 customer service person said it's</p> <p>12 recommended if you plug it in not to</p> <p>13 have a battery in it. But I didn't see</p> <p>14 any place where they told the consumer</p> <p>15 that.</p> <p>16 <b>Q.</b> Okay. So is the answer to my question</p> <p>17 yes, you understand the notebook</p> <p>18 computer can be used without the</p> <p>19 battery in it if you just plug it into</p> <p>20 the wall and plug it into the notebook?</p> <p>21 A. I do.</p> <p>22 <b>Q.</b> Okay. Do you know whether or not the</p> <p>23 pop-up battery authentication software</p> <p>24 that you reference in your report at</p> <p>25 page 15 and I believe earlier on page</p>	<p style="text-align: right;">Page 81</p> <p>1 replacement batteries.</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 <b>Q.</b> Now when you say they are non --</p> <p>5 third-party non-HP batteries, you're</p> <p>6 really referring to categories one and</p> <p>7 two of your definition, which is OEM</p> <p>8 and third-party HP approved batteries,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 <b>Q.</b> All right. You're not referring to</p> <p>12 nonapproved HP batteries, correct?</p> <p>13 A. I don't know if they do or they don't.</p> <p>14 But I agree with you that I know that</p> <p>15 they do to categories one and two.</p> <p>16 <b>Q.</b> Yeah. Well, but my point is you're</p> <p>17 making an affirmative representation in</p> <p>18 your report. So you can't make an</p> <p>19 affirmative representation about</p> <p>20 something you don't know about which</p> <p>21 you just stated.</p> <p>22 So the only thing -- the only</p> <p>23 thing you're referring to in this</p> <p>24 report are the items are HP approved</p> <p>25 battery packs, correct?</p>

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25 (Pages 94 to 97)

Page 94	Page 96
<p>1 A. Absolutely.</p> <p>2 <b>Q. Can you identify those that relate to</b></p> <p>3 <b>information that you know is pre 2009?</b></p> <p>4 A. I can't.</p> <p>5 <b>Q. Okay.</b></p> <p>6 A. On the HP website it doesn't -- it's</p> <p>7 not clear to me when it was posted.</p> <p>8 <b>Q. All right. So do you know whether or</b></p> <p>9 <b>not -- strike that.</b></p> <p>10 <b>So as you sit here today, you</b></p> <p>11 <b>cannot identify those portions of your</b></p> <p>12 <b>opinion that pertain to the time period</b></p> <p>13 <b>before the EliteBook was manufactured?</b></p> <p>14 <b>In particular I'm talking about</b></p> <p>15 <b>Mr. Power's -- before Mr. Power's</b></p> <p>16 <b>EliteBook was manufactured and that</b></p> <p>17 <b>which pertains to after.</b></p> <p>18 A. Well, you identified it very clearly.</p> <p>19 HP says that the authentication on the</p> <p>20 firmware came about in late 2008. I</p> <p>21 have no idea when they started</p> <p>22 manufacturing or when they started</p> <p>23 including that in the premanufactured</p> <p>24 units. I just don't know.</p> <p>25 <b>Q. And just to be clear, sir, I didn't say</b></p>	<p>1 only know that that's when it was</p> <p>2 posted that I could find.</p> <p>3 <b>Q. Correct. You have no idea when that --</b></p> <p>4 A. I have no idea. I have no idea.</p> <p>5 <b>Q. Okay. And so if you look at, you know,</b></p> <p>6 <b>How to Perform -- at the top of that it</b></p> <p>7 <b>says: How to Perform an HP Laptop</b></p> <p>8 <b>Battery Replacement.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. I do.</p> <p>11 <b>Q. And there you have a -- you have a</b></p> <p>12 <b>quote purporting to be from HP.com</b></p> <p>13 <b>store.</b></p> <p>14 A. Not purporting to be. It is.</p> <p>15 <b>Q. Well, I don't know. I'm not trying to</b></p> <p>16 <b>be rude. I have to say it that way</b></p> <p>17 <b>simply because I haven't --</b></p> <p>18 A. Okay. That's fair. That's fair.</p> <p>19 That's fair.</p> <p>20 <b>Q. Okay. But I'm not questioning your</b></p> <p>21 <b>integrity, sir. I want to be clear.</b></p> <p>22 A. I understand. No, no, no, I don't take</p> <p>23 offense at all. You're drilling down</p> <p>24 and that's your absolute right.</p> <p>25 <b>Q. All right. So at the top of that you</b></p>
Page 95	Page 97
<p>1 <b>it. I was reading from your report.</b></p> <p>2 A. I agree. I just don't know when it was</p> <p>3 implemented. I only know it was</p> <p>4 available according to HP in late 2008.</p> <p>5 I have no opinion as to when this was</p> <p>6 developed, when it was produced. I</p> <p>7 have to leave that to somebody else.</p> <p>8 <b>Q. But I guess what I'm talking about</b></p> <p>9 <b>though there is some other things. So</b></p> <p>10 <b>let's -- I mean, I'll will just go</b></p> <p>11 <b>through them.</b></p> <p>12 <b>You reference a -- on page 16</b></p> <p>13 <b>there is a community chat item that</b></p> <p>14 <b>was -- that was from 2012. So you have</b></p> <p>15 <b>a date there. So we know that that is</b></p> <p>16 <b>like from about 3 years after</b></p> <p>17 <b>Mr. Power's EliteBook was manufactured.</b></p> <p>18 <b>Do you see that?</b></p> <p>19 A. Absolutely correct.</p> <p>20 <b>Q. All right. But then there's stuff like</b></p> <p>21 <b>third-party reseller --</b></p> <p>22 A. But I don't know -- can I -- can I just</p> <p>23 finish?</p> <p>24 I don't know that</p> <p>25 recommendation didn't predate it. I</p>	<p>1 <b>don't have a date for that.</b></p> <p>2 <b>Do you see that?</b></p> <p>3 A. I don't believe there was a date on the</p> <p>4 website. It just was up now.</p> <p>5 <b>Q. Okay. So you don't know, for example,</b></p> <p>6 <b>then when this would have been posted,</b></p> <p>7 <b>correct?</b></p> <p>8 A. I don't.</p> <p>9 <b>Q. All right. In fact, this could have</b></p> <p>10 <b>been posted after Mr. Power's incident,</b></p> <p>11 <b>correct?</b></p> <p>12 A. Well, somebody might be able to get</p> <p>13 into the metadata and find out, but I</p> <p>14 can't do that.</p> <p>15 <b>Q. All right. Okay. So you don't know?</b></p> <p>16 A. I don't know. All I know is that I</p> <p>17 found it on hpstore.hp.com when I was</p> <p>18 writing my report.</p> <p>19 <b>Q. All right. And then if we go down</b></p> <p>20 <b>to -- it says: Third-Party Reseller</b></p> <p>21 <b>Documents.</b></p> <p>22 <b>Do you see that?</b></p> <p>23 A. I do.</p> <p>24 <b>Q. And I mean maybe a quicker way to do</b></p> <p>25 <b>this -- and I mean, I'll do it either</b></p>



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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 way. But maybe just to make our lives  2 a little easier if you look down  3 through -- under third-party reseller  4 documents, are there any items -- and  5 that goes all the way to page 19 to  6 additional documents. Are there any  7 items that as you sit here today you  8 can identify the date when that item  9 was put on the Internet?  10 A. No, sir.  11 Q. And therefore, with respect to my  12 earlier question, you don't know if  13 they were posted before the EliteBook  14 was manufactured, before the incident,  15 anything like that, correct?  16 A. With my skill level, there's no way for  17 me to know that. Maybe somebody else  18 can figure it out but I can't.  19 Q. So these documents that you reference  20 from page 16, Third-Party Reseller  21 Documents, over to page 19 to where it  22 says Additional Documents as far as you  23 know they could have been posted after  24 Mr. Power's incident, before  25 Mr. Power's incident; you just don't</p>	<p style="text-align: right;">Page 100</p> <p>1 fires with a discussion of batteries.  2 And then it says a reference to an NFPA  3 August 2006 entry in your report,  4 correct?  5 A. Correct.  6 Q. And so that -- and then the following  7 items are from the CPSC website it  8 looks like. And those are all dated.  9 So the date that is there is the date  10 you believe they were posted or  11 released, fair?  12 A. No. The date there is the date of the  13 CPSC recall.  14 Q. Yeah, I'm saying that those items were  15 posted and released to the public.  16 That's --  17 A. Oh, yeah. Okay. Yeah, sure.  18 Absolutely correct.  19 Q. Yeah. And with respect to the NFPA  20 item, that's not a recall notice, but  21 it's dated August 2006. So that's when  22 you believe that was issued, correct?  23 A. Correct.  24 Q. Do you know, sir, whether any of these  25 items that you reference from the</p>
<p style="text-align: right;">Page 99</p> <p>1 know?  2 A. I cannot ascertain that fact one way or  3 another.  4 Q. Okay. And then there's an item that's  5 called Additional Documents. And  6 again, I'm just going to ask you to --  7 let's just look at those headed HP  8 Laptop Battery Troubleshooting Tips and  9 Dell Laptop Battery - Frequently Asked  10 Questions.  11 There's no date associated  12 with those two entries on your report.  13 And is it fair to say that as you sit  14 here today you don't know when they  15 would have been posted either?  16 A. That's correct.  17 Q. And therefore, they could have been  18 posted before or after this incident,  19 correct?  20 A. I don't have the skills to find out.  21 Maybe somebody else does but I don't  22 know.  23 Q. All right. And then going over  24 there's -- there's a reference here  25 about computer and computer peripheral</p>	<p style="text-align: right;">Page 101</p> <p>1 bottom of page 20 over to -- the sort  2 of bottom quarter of page 27 where it  3 says Warning Documents do you have any  4 idea whether any of those recalls or  5 warnings relate to battery cells that  6 were not approved for use in the  7 original product?  8 A. I don't know.  9 Q. All right. All right. And then --  10 let's see here.  11 All right. Now just  12 directing your attention to page 27  13 where it says Warning Documents.  14 A. Uh-huh.  15 Q. And over to page 33 where it says  16 Discussion.  17 A. Right.  18 Q. All right. Can you identify any of  19 those warning documents that you  20 believe or understand were intended for  21 use with notebook computers  22 specifically?  23 A. Their general use to manufacturers,  24 distributors, and retailers, including  25 computer manufacturers. They're not --</p>

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27 (Pages 102 to 105)

Page 102	Page 104
<p>1 they're not only for computer  2 manufacturers.  3 <b>Q. All right. Do you know, sir, whether</b>  4 <b>or not there are other any standards</b>  5 <b>that pertain specifically to notebook</b>  6 <b>computers with respect to warnings?</b>  7 A. There are battery standards about  8 accessibility, and they have some  9 warnings in them, but not that I recall  10 otherwise.  11 <b>Q. All right. Can you -- what you just</b>  12 <b>referred to can you give me the</b>  13 <b>reference for that?</b>  14 A. Boy, I could. I can't right this  15 second, but I'm happy to find it for  16 you.  17 <b>Q. Okay. Well, is it referenced in your</b>  18 <b>report at all?</b>  19 A. No, sir.  20 <b>Q. And so that, what you just referred to,</b>  21 <b>didn't play a role in your opinions,</b>  22 <b>fair?</b>  23 A. Correct.  24 <b>Q. Okay. Are you aware as you sit here</b>  25 <b>today whether there are any industry</b></p>	<p>1 <b>13 if you look at your item number 5.</b>  2 <b>Just take a moment and read it to</b>  3 <b>yourself, and then I will ask you some</b>  4 <b>questions about it.</b>  5 ----  6 <b>(The witness reviewed the document.)</b>  7 ----  8 THE WITNESS: Okay. Yeah,  9 yeah. True.  10 BY MR. BETKE:  11 <b>Q. All right. Hang on.</b>  12 <b>So the first sentence you</b>  13 <b>wrote: There is no readily available</b>  14 <b>evidence that HP took corrective steps</b>  15 <b>to assist users in selecting only HP</b>  16 <b>approved replacement or spare battery</b>  17 <b>packs.</b>  18 <b>Did I read that correctly?</b>  19 A. You did.  20 <b>Q. All right. And so that's a lot of what</b>  21 <b>you have been talking about already</b>  22 <b>today.</b>  23 A. Right.  24 <b>Q. And I think I misread this, so I'm</b>  25 <b>going to -- so you're not suggesting</b></p>
Page 103	Page 105
<p>1 <b>standards or other guides regarding</b>  2 <b>warnings to be placed on either</b>  3 <b>notebook computers or battery packs for</b>  4 <b>a sale to consumers?</b>  5 A. I would have to go back and look. I  6 can reference the standards for you. I  7 could give them to Pete and -- but they  8 did not play a part in my opinion.  9 <b>Q. Okay. If they exist, they were not</b>  10 <b>considered and used in your report,</b>  11 <b>correct?</b>  12 A. That's correct.  13 <b>Q. All right. Now I believe you mentioned</b>  14 <b>that you looked but could not find any</b>  15 <b>indication that HP had tried to take</b>  16 <b>action against nonapproved -- sellers</b>  17 <b>of nonapproved battery packs and cells.</b>  18 <b>Did I get that correct or am</b>  19 <b>I wrong?</b>  20 A. I didn't say that but it's true. I  21 don't know but I didn't say I don't  22 think.  23 <b>Q. All right. Okay. Hang on one second.</b>  24 <b>Let me just see. Maybe I misread it.</b>  25 <b>Here it is. Okay. On page</b></p>	<p>1 <b>that HP hasn't tried to stop people --</b>  2 <b>we'll call them unscrupulous people</b>  3 <b>from selling nonapproved HP battery</b>  4 <b>packs and cells? That's not what</b>  5 <b>you're saying here, correct?</b>  6 A. No, no, not at all. HP very well may  7 be suing everybody to stop it. I have  8 no idea.  9 <b>Q. All right. And when you say there's no</b>  10 <b>readily available evidence that HP took</b>  11 <b>corrective steps to assist users in</b>  12 <b>selecting only HP approved replacement</b>  13 <b>or spare battery packs, what's the --</b>  14 <b>what's the basis of that?</b>  15 A. I could not find anything that would  16 help the consumers understand what an  17 HP --  18 COURT REPORTER: I'm sorry.  19 Ray, can you delete -- can you put it  20 on mute?  21 ----  22 <b>(There was a recess in the proceedings from</b>  23 <b>11:50 a.m. to 11:52 a.m.)</b>  24 ----  25 BY MR. BETKE:</p>



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**Transcript of William Kitzes, J.D.**

30 (Pages 114 to 117)

<p style="text-align: right;">Page 114</p> <p>1 <b>Q. T as in Tom?</b></p> <p>2 A. T-R-A-F-E.</p> <p>3 <b>Q. Yeah, that's how I wrote it down.</b></p> <p>4 <b>Thank you.</b></p> <p>5 A. Yeah.</p> <p>6 <b>Q. And then I believe I asked you this,</b></p> <p>7 <b>but I wanted to just make sure I got it</b></p> <p>8 <b>right. And you said a few times that</b></p> <p>9 <b>it's confusing because -- my words, not</b></p> <p>10 <b>yours, on one hand HP is telling people</b></p> <p>11 <b>we use third-party vendors but on the</b></p> <p>12 <b>other hand only buy from HP.</b></p> <p>13 <b>Did I get that right?</b></p> <p>14 A. You got that exactly right.</p> <p>15 <b>Q. Okay. Where is it that HP tells</b></p> <p>16 <b>people -- you know, what can you</b></p> <p>17 <b>reference to me where HP has said we</b></p> <p>18 <b>use third-party vendors?</b></p> <p>19 A. Okay. Let's go back I think to page</p> <p>20 13.</p> <p>21 <b>Yep, there it is. The HP</b></p> <p>22 <b>official site. We take safety very</b></p> <p>23 <b>seriously, and we provide safety data</b></p> <p>24 <b>sheets about third-party non-HP</b></p> <p>25 <b>batteries used in HP products and</b></p>	<p style="text-align: right;">Page 116</p> <p>1 <b>Q. Did that play any role in your opinion?</b></p> <p>2 A. He cited some facts. Nothing he said</p> <p>3 from an engineering point of view had</p> <p>4 anything to do with my opinions.</p> <p>5 <b>Q. Okay. And what about the stuff that he</b></p> <p>6 <b>wrote about different patent</b></p> <p>7 <b>applications and things of that nature?</b></p> <p>8 A. Not anything that impacted my opinion.</p> <p>9 <b>Q. Okay. And did you do anything to</b></p> <p>10 <b>determine -- independent research to</b></p> <p>11 <b>determine what, if any, the problem --</b></p> <p>12 <b>strike that.</b></p> <p>13 <b>Did you do any research to</b></p> <p>14 <b>determine if, in fact, there was a</b></p> <p>15 <b>problem with nonapproved batteries</b></p> <p>16 <b>being used in notebook computers in and</b></p> <p>17 <b>around 2008 and 2009?</b></p> <p>18 A. No, sir.</p> <p>19 <b>Q. Okay. Do you have an understanding at</b></p> <p>20 <b>what point in time there became a</b></p> <p>21 <b>problem with nonapproved batteries</b></p> <p>22 <b>being used in notebook computers</b></p> <p>23 <b>whether they be Dell, HP, or Toshiba or</b></p> <p>24 <b>any? Do you have -- do you have an</b></p> <p>25 <b>idea when that became an industry</b></p>
<p style="text-align: right;">Page 115</p> <p>1 throughout the industry.</p> <p>2 <b>HP to their credit works with</b></p> <p>3 <b>third-party providers to make sure the</b></p> <p>4 <b>batteries are approved by HP and</b></p> <p>5 <b>therefore compatible. I think that's</b></p> <p>6 <b>terrific. But I'm still confused</b></p> <p>7 <b>whether they're saying you should only</b></p> <p>8 <b>buy from us or you could buy one of</b></p> <p>9 <b>our -- from one of our third parties</b></p> <p>10 <b>that we work with. They seem to</b></p> <p>11 <b>contradict themselves. That's all.</b></p> <p>12 <b>Q. All right. So what you're referring to</b></p> <p>13 <b>starts at the bottom of page 13 and</b></p> <p>14 <b>goes over to the top of page 14,</b></p> <p>15 <b>correct?</b></p> <p>16 A. That is correct.</p> <p>17 <b>Q. That's the statement?</b></p> <p>18 A. That's the statement.</p> <p>19 <b>Q. Okay. All right. Let me see what else</b></p> <p>20 <b>I've got here.</b></p> <p>21 A. I hope not much.</p> <p>22 <b>Q. Did you -- did you review the opinion</b></p> <p>23 <b>of Mr. Kutcheck in connection with this</b></p> <p>24 <b>case?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 <b>problem?</b></p> <p>2 A. Not exactly. But when you look at the</p> <p>3 recalls, some of the problems are with</p> <p>4 OEM or HP approved batteries and some</p> <p>5 are not. I don't know the percentages.</p> <p>6 But it can happen with an approved</p> <p>7 product, and it can happen with an</p> <p>8 unapproved product.</p> <p>9 <b>Q. All right. I -- I thought I asked you,</b></p> <p>10 <b>but I will ask you again just to make</b></p> <p>11 <b>sure because I think what you just said</b></p> <p>12 <b>led me to think that maybe I got it</b></p> <p>13 <b>wrong.</b></p> <p>14 <b>Can you identify in the</b></p> <p>15 <b>recalls that you referenced any that</b></p> <p>16 <b>involved so-called nonapproved</b></p> <p>17 <b>batteries, meaning they were not</b></p> <p>18 <b>approved by the manufacturer of the</b></p> <p>19 <b>notebook computer being part of the</b></p> <p>20 <b>recall?</b></p> <p>21 A. It's not stated such in the recalls.</p> <p>22 <b>Q. You do not know --</b></p> <p>23 A. It just said they're recalling the</p> <p>24 units because there are fires. It</p> <p>25 doesn't say whose battery pack was in</p>

**NETWORK DEPOSITION SERVICES**  
**Transcript of William Kitzes, J.D.**

32 (Pages 122 to 125)

<p style="text-align: right;">Page 122</p> <p>1 all models of that notebook regardless</p> <p>2 of what battery pack or cell was in it;</p> <p>3 is that correct?</p> <p>4 A. That's correct. There's no</p> <p>5 differentiation as -- they know who the</p> <p>6 OEM was. But the commission has no</p> <p>7 indication as to what battery packs</p> <p>8 were in the ones that caught fire. So</p> <p>9 they are just recalling all the HP</p> <p>10 model numbers regardless of battery</p> <p>11 pack that's in the specific computer.</p> <p>12 That's correct.</p> <p>13 Q. That's your understanding?</p> <p>14 A. That's my understanding.</p> <p>15 Q. Okay. Correct. All right.</p> <p>16 Are you aware of the UL</p> <p>17 standard for notebook computers?</p> <p>18 A. I'm only aware that there is one.</p> <p>19 Q. Do you know the number of the standard</p> <p>20 that applies to consumer electronic</p> <p>21 products like notebooks?</p> <p>22 A. Note off the top of my head, no.</p> <p>23 Q. Do you know if it contains any</p> <p>24 requirements regarding warnings to be</p> <p>25 provided with the computer?</p>	<p style="text-align: right;">Page 124</p> <p>1 something you haven't looked at,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Do you offer any opinions about whether</p> <p>5 authentication technology was industry</p> <p>6 standard in or around 2009?</p> <p>7 A. There was a discussion of it in some of</p> <p>8 the engineering reports. I just know</p> <p>9 what I read on HP's websites and that</p> <p>10 is that in late 2008 it was possible.</p> <p>11 Q. All right. That's -- that's the sum</p> <p>12 and substance of your knowledge in that</p> <p>13 regard, correct?</p> <p>14 A. Absolutely correct.</p> <p>15 MR. BETKE: All right. I</p> <p>16 don't have any further questions.</p> <p>17 Thank you, sir.</p> <p>18 THE WITNESS: Thank you,</p> <p>19 Mr. -- say your last name again.</p> <p>20 MR. BETKE: Betke. Betke.</p> <p>21 THE WITNESS: Betke. I was</p> <p>22 going to say Chris but that's too</p> <p>23 informal.</p> <p>24 MR. BETKE: No, that's okay.</p> <p>25 THE WITNESS: Chris, I</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Sometimes they do. Sometimes they</p> <p>2 don't. Honestly I don't know.</p> <p>3 Q. You haven't looked at it?</p> <p>4 A. I haven't. It doesn't impact my</p> <p>5 opinion.</p> <p>6 Q. All right. And what about -- the same</p> <p>7 question. Do you know if with respect</p> <p>8 to at least the original battery pack</p> <p>9 do you know what UL standard applied to</p> <p>10 it?</p> <p>11 A. Nope.</p> <p>12 Q. Same with -- same question but with</p> <p>13 cells?</p> <p>14 A. No. That's all the engineers' issues,</p> <p>15 not mine.</p> <p>16 Q. All right. Do you know whether either</p> <p>17 the UL standard for battery packs or UL</p> <p>18 standard for battery cells contained in</p> <p>19 it any warning, requirements, or</p> <p>20 suggestions?</p> <p>21 A. I do not know. And I have no opinion</p> <p>22 as to whether or not they complied with</p> <p>23 whatever might be in there or not. It</p> <p>24 just doesn't impact my --</p> <p>25 Q. You can't offer an opinion about</p>	<p style="text-align: right;">Page 125</p> <p>1 appreciate it.</p> <p>2 ---</p> <p>3 EXAMINATION</p> <p>4 ---</p> <p>5 BY MR. FRIDAY:</p> <p>6 Q. Okay. We're back here.</p> <p>7 Bill, Mr. Kitzes, did</p> <p>8 anything that was raised in questioning</p> <p>9 from Counsel today change any of the</p> <p>10 opinions that you expressed in your</p> <p>11 report in this matter?</p> <p>12 A. No, sir.</p> <p>13 Q. And can you explain for us why not?</p> <p>14 A. Because I just -- in answers to Chris's</p> <p>15 questions, I just explained what was in</p> <p>16 my report. Nothing changed.</p> <p>17 MR. BETKE: I thought you</p> <p>18 were going to say they were dumb</p> <p>19 questions. That would've hurt.</p> <p>20 THE WITNESS: I would never</p> <p>21 say that. There's no such thing as a</p> <p>22 dumb question.</p> <p>23 MR. FRIDAY: Okay. I don't</p> <p>24 have anymore questions.</p> <p>25 MR. BETKE: All right. Thank</p>